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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 11th August, 1971:—

BILL No. 113 of 1971

A Bill to determine the conditions of service of the Comptroller and Auditor-General of India and to prescribe his duties and powers and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971. Short title.

2. In this Act, unless the context otherwise requires,— Definitions.

(a) "accounts", in relation to commercial undertakings of a Government, includes trading, manufacturing and profit and loss accounts and balance-sheets and other subsidiary accounts;

(*b*) "appropriation accounts" means accounts which relate the expenditure brought to account during a financial year, to the several items specified in the law made in accordance with the provisions of the Constitution or of the Government of Union Territories Act, 1963, 20 of 1963. for the appropriation of moneys out of the Consolidated Fund of India or of a State, or of a Union territory having a Legislative Assembly, as the case may be;

(*c*) "Comptroller and Auditor-General" means the Comptroller and Auditor-General of India appointed under article 148 of the Constitution;

(*d*) "State" means a State specified in the First Schedule to the Constitution;

(*e*) "Union" includes a Union territory, whether having a Legislative Assembly or not.

CHAPTER II

SALARY AND OTHER CONDITIONS OF SERVICE OF THE COMPTROLLER AND AUDITOR-GENERAL

Salary.

3. There shall be paid to the Comptroller and Auditor-General a salary which is equal to the salary of the Judge of the Supreme Court:

Provided that if a person who, immediately before the date of assuming office as the Comptroller and Auditor-General, was in receipt of, or, being eligible so to do, had elected to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Government of the Union or any of its predecessor Governments, or under the Government of a State or any of its predecessor Governments, his salary in respect of service as Comptroller and Auditor-General shall be reduced—

(*a*) by the amount of that pension; and

(*b*) if he had, before assuming office, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension; and

(*c*) if he had, before assuming office, received, or become eligible for receiving, a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

Term of office.

4. The Comptroller and Auditor-General shall hold office for a term of six years from the date on which he assumes such office:

Provided that where he attains the age of sixty-five years before the expiry of the said term of six years, he shall vacate such office on the date on which he attains the said age:

Provided further that he may, at any time, by writing under his hand addressed to the President, resign his office.

Explanation.—For the purpose of this section, the term of six years in respect of the Comptroller and Auditor-General holding office immediately before the commencement of this Act, shall be computed from the date on which he had assumed office.

Leave.

5. (*1*) A person who, immediately before the date of assuming office as the Comptroller and Auditor-General, was in the service of Government may be granted during his tenure of office but not thereafter, leave in accordance with the rules for the time being applicable to the Service to which he belonged before such date and he shall be entitled to carry forward the amount of leave standing at his credit on such date, notwithstanding anything contained in section 6.

(2) Any other person who is appointed as the Comptroller and Auditor-General may be granted leave in accordance with such rules as are for the time being applicable to a member of the Indian Administrative Service.

(3) The power to grant or refuse leave to the Comptroller and Auditor-General and to revoke or curtail leave granted to him, shall vest in the President.

Pension.

6. (*1*) A person who, immediately before the date of assuming office as the Comptroller and Auditor-General, was in the service of Government shall be deemed to have retired from service on the date on which he enters upon office as the Comptroller and Auditor-General but his service as the Comptroller and Auditor-General shall be reckoned as continuing approved service counting for pension in the Service to which he belonged.

(2) Every person who enters upon office as the Comptroller and Auditor-General shall, on demitting the said office, be eligible to a pension of a sum of fifteen thousand rupees per annum which sum shall include the aggregate of all pensions payable to him and the commuted portion, if any, of his pension, and the pension equivalent of the retirement gratuity, if any, which may have been admissible to him under the rules for the time being applicable to the Service to which he belonged:

Provided that if such a person is or becomes eligible, at any time, under the rules for the time being governing the service to which he belonged, to a pension higher than the said sum of fifteen thousand rupees, he shall be eligible to draw, as pension, the said higher amount.

(3) A person who, immediately before the date of assuming office as the Comptroller and Auditor-General, was in receipt of, or, had become eligible for receiving, a pension in respect of any previous service under Government, shall, on demitting office as the Comptroller and Auditor-General, be eligible to a pension of fifteen thousand rupees per annum which sum shall include the aggregate of all pensions payable to him and the commuted portion, if any, of his pension, and the pension equivalent of the retirement gratuity, if any, which may have been admissible to him under the rules for the time being applicable to the Service to which he belonged:

Provided that if such a person is or becomes eligible, at any time, under the rules for the time being governing the Service to which he

belonged, to a pension higher than the said sum of fifteen thousand rupees, he shall be eligible to draw as pension, the said higher amount.

(4) Any other person who is appointed as the Comptroller and Auditor-General shall, on demitting the said office, be eligible to a pension of fifteen thousand rupees per annum.

(5) The person holding office immediately before the commencement of this Act as the Comptroller and Auditor-General shall be eligible to draw, at his option, pension at the rate at which it would be admissible to him if this Act had not come into force or at the rate specified in this section.

(6) A person who demits office as the Comptroller and Auditor-General by resignation shall, on such demission, be eligible to a pension at the rate of two thousand rupees per annum for each completed year of his service as the Comptroller and Auditor-General:

Provided that in the case of a person referred to in sub-section (1) or sub-section (3), the aggregate amount of pension admissible under this sub-section together with the amount of pension including the commuted portion, if any, of his pension, and the pension equivalent of the retirement gratuity, if any, which may have been admissible to him under the rules for the time being applicable to the Service to which he belonged immediately before he assumed office as the Comptroller and Auditor-General, shall not exceed fifteen thousand rupees per annum or the higher pension referred to in proviso to sub-section (2) or sub-section (3), as the case may be.

(7) If a person who demits office as the Comptroller and Auditor-General is not eligible to any pension under this section but is eligible to a pension under the rules for the time being applicable to the Service to which he belonged immediately before he assumed office as the Comptroller and Auditor-General, he shall, notwithstanding anything contained in this section, be eligible to draw such pension as is admissible to him under the said rules.

(8) Except where he demits office by resignation, a person holding office of the Comptroller and Auditor-General shall be deemed, for the purposes of this Act, to have demitted such office as such if, and only if,—

(a) he has completed the term of office specified in section 4, or

(b) he has attained the age of sixty-five years, or

(c) his demission of office is medically certified to be necessitated by ill health.

Commutation of pension.

7. The Civil Pensions (Commutation) Rules for the time being in force shall, with such adaptations as may be made therein by the President, apply to a person who had held office as the Comptroller and Auditor-General.

Right to subscribe to General Provident Fund.

8. Every person holding office as the Comptroller and Auditor-General shall be entitled to subscribe to the General Provident Fund (Central Services).

9. Save as otherwise expressly provided in this Act, the other conditions of service of a person holding office as the Comptroller and Auditor-General including his emoluments during any period of duty out of India and his travelling allowance while travelling on duty, shall be determined by the rules for the time being applicable to a member of the Indian Administrative Service holding the rank of Secretary to the Government of India: Other conditions of service.

Provided that nothing in this section shall have effect so as to give a person, who immediately before the date of assuming office as the Comptroller and Auditor-General, was in the service of Government, less favourable terms in respect of any of the matters aforesaid than those to which he would be entitled as a member of the Service to which he belonged, his service as Comptroller and Auditor-General being treated for the purpose of this proviso as continuing service in the Service to which he belonged.

CHAPTER III

DUTIES AND POWERS OF THE COMPTROLLER AND AUDITOR-GENERAL

10. (*1*) The Comptroller and Auditor-General shall be responsible— Comptroller and Auditor-General to compile accounts of Union and States.

(*a*) for compiling the accounts of the Union and of each State from the initial and subsidiary accounts rendered to the audit and accounts offices under his control by treasuries, offices or departments responsible for the keeping of such accounts; and

(*b*) for keeping such accounts in relation to any of the matters specified in clause (*a*) as may be necessary:

Provided that the President as respects the accounts of the Union, and the Governor of a State as respects the accounts of that State, may, after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for compiling the accounts of any particular service or department of the Union or of a State, as the case may be:

Provided further that the President may, after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for keeping the accounts of any particular class or character.

(*2*) Where, under any arrangement, a person other than the Comptroller and Auditor-General has, before the commencement of this Act, been responsible—

(*i*) for compiling the accounts of any particular service or department of the Union or of a State, or

(*ii*) for keeping the accounts of any particular class or character,

such arrangement shall, notwithstanding anything contained in sub-section (*1*), continue to be in force unless, after consultation with the Comptroller and Auditor-General, it is recoked in the case referred to in clause (*i*), by an order of the President or the Governor of the State, as the case may be, and in the case referred to in clause (*ii*), by an order of the President.

Comptroller and Auditor-General to prepare and submit accounts to the President, Governors of States and Administrators of Union territories having Legislative Assemblies.

11. The Comptroller and Auditor-General shall, from the accounts compiled by him or by any other person responsible in that behalf, prepare in each year accounts (including, in the case of accounts compiled by him, appropriation accounts) showing under the respective heads the annual receipts and disbursements for the purpose of the Union, of each State and of each Union territory having a Legislative Assembly, and shall submit those accounts to the President or the Governor of a State or Administrator of the Union territory having a Legislative Assembly, as the case may be, on or before such dates as he may, with the concurrence of the Government concerned, determine.

Comptroller and Auditor-General to give information and render assistance to the Union and States.

12. The Comptroller and Auditor-General shall, in so far as the accounts, for the compilation or keeping of which he is responsible, enable him so to do, give to the Union Government, to the State Governments or to the Governments of Union territories having Legislative Assemblies, as the case may be, such information as they may, from time to time, require, and render such assistance in the preparation of their annual financial statements as they may reasonably ask for.

General provisions relating to audit.

13. It shall be the duty of the Comptroller and Auditor-General—

(*a*) to audit all expenditure from the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly and to ascertain whether the moneys shown in the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have been applied or charged and whether the expenditure conforms to the authority which governs it:

(*b*) to audit all transactions of the Union and of the States relating to Contingency Funds and Public Accounts;

(*c*) to audit all trading, manufacturing, profit and loss accounts and balance-sheets and other subsidiary accounts kept in any department of the Union or of a State;

and in each case to report on the expenditure, transactions or accounts so audited by him.

Audit of receipts and expenditure of bodies or authorities substantially financed.

14. Where any body or authority is substantially financed by grants or loans from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly, the Comptroller and Auditor-General shall, subject to the provisions of any law for the time being in force applicable to the body or authority, as the case may be, audit all receipts and expenditure of that body or authority and to report on the receipts and expenditure audited by him.

Explanation.—Where the grant or loan to a body or authority from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in a financial year is not less than rupees five lakhs and the amount of such grant or loan is not less than seventy-five per cent. of the total expenditure of that body or authority, such body or authority shall be deemed, for the purposes of this section, to be substantially financed by such grants or loans, as the case may be. from Union or State Revenues.

15. (*1*) Where any grant or loan is given for any specific purpose from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly to any authority or body, not being a foreign State or international organisation, the Comptroller and Auditor-General shall scrutinise the procedures by which the sanctioning authority satisfies itself as to the fulfilment of the conditions subject to which such grants or loans were given and shall for this purpose have right of access, after giving reasonable previous notice, to the books and accounts of that authority or body: Functions of Comptroller and Auditor-General in the case of grants or loans given to other authorities or bodies.

Provided that the President, the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, may, where he is of opinion that it is necessary so to do in the public interest, by order, relieve the Comptroller and Auditor-General, after consultation with him, from making any such scrutiny in respect of any body or authority receiving such grant or loan.

(*2*) Except where he is authorised so to do by the President, the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, the Comptroller and Auditor-General shall not have, while exercising the powers conferred on him by sub-section (*1*), right of access to the books and accounts of any corporation to which any such grant or loan as is referred to in sub-section (*1*) is given if the law by or under which such corporation has been established provides for the audit of the accounts of such corporation by an agency other than the Comptroller and Auditor-General:

Provided that no such authorisation shall be made except after consultation with the Comptroller and Auditor-General and except after giving the concerned corporation a reasonable opportunity of making representations with regard to the proposal to give to the Comptroller and Auditor-General right of access to its books and accounts.

16. It shall be the duty of the Comptroller and Auditor-General to audit all receipts which are payable into the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly and to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed and to make for this purpose such examination of the accounts as he thinks fit and report thereon. Audit of receipts of Union or of States.

17. The Comptroller and Auditor-General shall have authority to audit and report on the accounts of stores and stock kept in any office or department of the Union or of a State. Audit of accounts of stores and stock.

18. (*1*) The Comptroller and Auditor-General shall, in connection with the performance of his duties under this Act, have authority— Powers of Comptroller and Auditor-

(*a*) to inspect any office of accounts under the control of the Union or of a State, including treasuries and such offices responsible

General in connection with audit of accounts.

for the keeping of initial or subsidiary accounts, as submit accounts to him;

(b) to require that any accounts, books, papers and other documents which deal with or form the basis of or are otherwise relevant to the transactions to which his duties in respect of audit extend, shall be sent to such place as he may appoint for his inspection;

(c) to put such questions or make such observations as he may consider necessary, to the person in charge of the office and to call for such information as he may require for the preparation of any account or report which it is his duty to prepare.

(2) The person in charge of any office or department, the accounts of which have to be inspected and audited by the Comptroller and Auditor-General, shall afford all facilities for such inspection and comply with requests for information in as complete a form as possible and with all reasonable expedition.

Audit of Government companies and corporations.

19. (1) The duties and powers of the Comptroller and Auditor-General in relation to the audit of the accounts of Government companies shall be performed and exercised by him in accordance with the provisions of the Companies Act, 1956. 1 of 1956.

(2) The duties and powers of the Comptroller and Auditor-General in relation to the audit of the accounts of corporations (not being companies) established by or under law made by Parliament shall be performed and exercised by him in accordance with the provisions of the respective Legislations.

(3) The Governor of a State or the Administrator of a Union territory having a Legislative Assembly may, where he is of opinion that it is necessary in the public interest so to do, request the Comptroller and Auditor-General to audit the accounts of a corporation established by law made by the Legislature of the State or of the Union territory, as the case may be, and where such request has been made, the Comptroller and Auditor-General shall audit the accounts of such corporation and shall have, for the purposes of such audit, right of access to the books and accounts of such corporation:

Provided that no such request shall be made except after consultation with the Comptroller and Auditor-General and except after giving reasonable opportunity to the corporation to make representations with regard to the proposal for such audit.

Audit of accounts of certain authorities or bodies.

20. (1) Save as otherwise provided in section 19, where the audit of the accounts of any body or authority has not been entrusted to the Comptroller and Auditor-General by or under any law made by Parliament, he shall, if requested so to do by the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, undertake the audit of the accounts of such body or authority on such terms and conditions as may be agreed upon between him and the concerned Government and shall have, for the purposes of such audit, right of access to the books and accounts of that body or authority:

Provided that no such request shall be made except after consultation with the Comptroller and Auditor-General.

(2) The Comptroller and Auditor-General may propose to the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, that he may be authorised to undertake the audit of the accounts of any body or authority, the audit of the accounts of which has not been entrusted to him by law, if he is of opinion that such audit is necessary because a substantial amount has been invested in, or advanced to, such body or authority by the Central or State Government or by the Government of a Union territory having a Legislative Assembly, and on such request being made, the President or the Governor or the Administrator, as the case may be, may empower the Comptroller and Auditor-General to undertake the audit of the accounts of such body or authority.

(3) The audit referred to in sub-section (1) or sub-section (2) shall not be entrusted to the Comptroller and Auditor-General except where the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, is satisfied that it is expedient so to do in the public interest and except after giving a reasonable opportunity to the concerned body or authority to make representations with regard to the proposal for such audit.

CHAPTER IV

MISCELLANEOUS

Delegation of power of Comptroller and Auditor-General.

21. Any power exercisable by the Comptroller and Auditor-General under the provisions of this Act, or any other Law may be exercised by such officer of his department as may be authorised by him in this behalf by general or special order:

Provided that except during the absence of the Comptroller and Auditor-General on leave or otherwise, no officer shall be authorised to submit on behalf of the Comptroller and Auditor-General any report which the Comptroller and Auditor-General is required by the Constitution or the Government of Union Territories Act, 1963 to submit to the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be.

20 of 1963.

Power to make rules.

22. (1) The Central Government may, after consultation with the Comptroller and Auditor-General, by notification in the Official Gazette, make rules for carrying out the provisions of this Act in so far as they relate to the maintenance of accounts.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which initial and subsidiary accounts shall be kept by the treasuries, offices and departments rendering accounts to audit and accounts offices;

(b) the manner in which the accounts of any particular service or department or of any particular class or character, in respect of which the Comptroller and Auditor-General has been relieved from the responsibility of compiling or keeping the accounts, shall be compiled or kept;

(c) the manner in which the accounts of stores and stock shall be kept in any office or department of the Union or of a State, as the case may be;

(d) any other matter which is required to be, or may be, prescribed by rules.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to make regulations.

23. The Comptroller and Auditor-General is hereby authorised to make regulations for carrying into effect the provisions of this Act in so far as they relate to the scope and extent of audit, including laying down for the guidance of the Government Departments the general principles of Government accounting and the broad principles in regard to audit of receipts and expenditure.

Power to dispense with detailed audit.

24. The Comptroller and Auditor-General is hereby authorised to dispense with, when circumstances so warrant, any part of detailed audit of any accounts or class of transactions and to apply such limited check in relation to such accounts or transactions as he may determine.

Repeal.

25. The Comptroller and Auditor-General (Conditions of Service) Act, 1953, is hereby repealed. 21 of 1953.

Removal of doubts

26. For the removal of doubts, it is hereby declared that on the commencement of this Act the Government of India (Audit and Accounts) Order, 1936, as adapted by the India (Provisional Constitution) Order, 1947, shall cease to be in force except as respects anything done or any action taken thereunder.

STATEMENT OF OBJECTS AND REASONS

Article 148(3) of the Constitution provides that the salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by law and until so determined, shall be as specified in the Second Schedule to the Constitution. Further, article 149 of the Constitution lays down that the Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and until so prescribed, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of the Constitution.

The conditions of service of the Comptroller and Auditor-General are at present governed by three separate sets of provisions, namely, paragraph 12 of the Second Schedule to the Constitution which refers to salary and rights in respect of leave of absence and other conditions of service; the Comptroller and Auditor-General (Conditions of Service) Act, 1953 which regulates the term of office of the Comptroller and Auditor-General and his pensionary entitlements; and the Government of India (Audit and Accounts) Order, 1936 made under section 166 of the Government of India Act, 1935, which continues to be in force in so far as the other conditions of service are concerned (mostly leave of absence and travelling allowance).

The duties and powers of the Comptroller and Auditor-General in relation to the accounts of the Union and of the States continue to be governed by the provisions of the Government of India (Audit and Accounts) Order, 1936, which remains in force in view of the provisions of article 149 of the Constitution.

The Bill seeks to provide comprehensively for the conditions of service and duties and powers of the Comptroller and Auditor-General in replacement of the various provisions in this regard as referred to above. While it broadly follows the existing provisions both in respect of conditions of service and duties and powers, it makes certain modifications as indicated below:—

(a) *Conditions of service*

(*i*) *Salary.*—The Bill provides that the Comptroller and Auditor-General shall be paid a salary which is equal to the salary of the Judge of the Supreme Court. This is a slight modification of the existing provision which provides for a salary of Rs. 4,000 per month. The salary of the Judge of the Supreme Court is also Rs. 4,000 per month at present.

(*ii*) *Term of office.*—The Bill provides that Comptroller and Auditor-General shall hold office for a term of 6 years and that where he attains the age of 65 years before the expiry of the term he shall vacate office on the date on which he attains as the age of 65. The existing provision is that the Comptroller and Auditor-General shall hold office for a term of 6 years and there is no age limit for holding the office of Comptroller and Auditor-General. Age limit is now being prescribed.

(*iii*) *Pension.*—The Bill provides that a person who, immediately before assuming office as Comptroller and Auditor-General, was in the service of Government, shall be deemed to have retired from the previous service on the date on which he enters upon office as the Comptroller and Auditor-General, but for purposes of pension, service as Comptroller and Auditor-General will be counted as approved service in the Service to which he belonged. On demitting office as the Comptroller and Auditor-General he will be paid a pension of Rs. 15,000 per annum which will be inclusive of any prior pension admissible to or earned by him including pension equivalent of death-cum-retirement gratuity. Any other person appointed as Comptroller and Auditor-General will also be eligible to a pension of Rs. 15,000 per annum. This pension will be admissible if a person demits the office of Comptroller and Auditor-General on completing his tenure or attaining the age of 65 or due to ill-health. In case of resignation he will be entitled to a pension of Rs. 2,000 per annum for each completed year of service as Comptroller and Auditor-General but the total annual pension payable to a person inclusive of any prior pension admissible to him for service under Government will not exceed Rs. 15,000. Moreover, if the Comptroller and Auditor-General is or becomes eligible at any time under the rules governing the Service to which he belonged to a pension higher than Rs. 15,000 he shall be eligible to draw the higher pension. The existing provision provides that on demitting office, the Comptroller and Auditor-General will be eligible to pension under the rules of the Service to which he belonged and in addition to an additional pension of Rs. 600 per annum for each completed year of service as Comptroller and Auditor-General subject to a maximum of £1,000 in the case of officers belonging to the Indian Civil Service and Rs. 12,000 in the case of officers belonging to other Services. The ceiling does not include pension equivalent of death-cum-retirement gratuity admissible to the officer. The pension provided in the Bill will be applicable to the present incumbent of the office of the Comptroller and Auditor-General at his option if it is of advantage to him as well as for future incumbents.

(*iv*) *Other conditions of service.*—The Bill extends the benefit of the Civil Pensions (Commutation) Rules to the Comptroller and Auditor-General, and also provides that the other conditions of service of the Comptroller and Auditor-General shall be determined by the rules applicable to a member of the Indian Administrative Service holding the rank of a Secretary to the Government of India.

(b) *Duties and powers*

(*i*) The Bill provides for audit by the Comptroller and Auditor-General of all expenditure from the Consolidated Fund of India, of each State and of each Union territory having a Legislative Assembly and also of all transactions relating to the Contingency Funds and Public Accounts.

(*ii*) The Bill provides for audit by the Comptroller and Auditor-General of the accounts of bodies or authorities substantially financed by grants or loans from the Consolidated Fund of India or a State or of a Union territory having a Legislative Assembly. For this purpose, a grant or loan will be treated as substantial if it is not less than Rs. 5,00,000 and constitutes not less than 75 per cent. of the total expenditure of the body or authority in a financial year.

(*iii*) The Bill provides for scrutiny by the Comptroller and Auditor-General of the procedures by which an authority sanctioning a grant or a loan to any body or authority satisfies itself as to the fulfilment of the conditions subject to which the grant or loan was given and for this purpose gives him the right of access to the books of the body or authority, with certain exceptions.

(*iv*) The Bill provides for the audit by the Comptroller and Auditor-General of all receipts which are payable into the Consolidated Fund of India or of a State or of a Union territory having a Legislative Assembly and to satisfy himself that the rules and procedures are designed to secure an effective check on assessment, collections, etc., and to report thereon.

(*v*) The Bill provides that the Comptroller and Auditor-General shall, if so requested by the President or the Governor of a State or the Administrator of a Union territory, as the case may be, undertake the audit of the accounts of any authority or body not otherwise entrusted to him by or under any law made by Parliament. Such request will be required to be made in public interest and after consultation with the Comptroller and Auditor-General and after giving a reasonable opportunity to the body or authority for making representations with regard to the proposal for audit by the Comptroller and Auditor-General. The Comptroller and Auditor-General may also propose to the President or the Governor of a State or the Administrator, of a Union territory having a Legislative Assembly, that he may be authorised to undertake the audit of any body or authority not entrusted to him.

The notes on clauses appended to the Bill explain the provisions of the Bill.

NEW DELHI: Y. B. CHAVAN.

The 4th August, 1971.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F.1 (26) B|71, dated the 4th August, 1971 from Shri Y. B. Chavan, Minister of Finance to the Secretary, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill to determine the conditions of service of the Comptroller and Auditor-General of India and to prescribe his duties and powers and for matters connected therewith or incidental thereto recommends the introduction of the Bill in the Lok Sabha under clause (1) of article 117 of the Constitution and its consideration under clause (3) of article 117 of the Constitution.

Notes on clauses

Clause 2.—This clause seeks to insert certain definitions which are largely based on the meanings assigned to them in the Government of India (Audit and Accounts) Order, 1936 which continues to govern the duties and powers of the Comptroller and Auditor-General in terms of article 149 of the Constitution.

Clause 3.—Under the existing provision a person appointed as Comptroller and Auditor-General is entitled to salary at the rate of Rs. 4,000 per mensem *vide* paragraph 12 (1) in Part E of the Second Schedule to the Constitution. Under this clause the Comptroller and Auditor-General would be entitled to the same salary as that of a Judge of the Supreme Court. Financially this change has no significance as the present salary of a Supreme Court Judge is also Rs. 4,000. If, however, the salary of Supreme Court Judge is revised at a future date the Comptroller and Auditor-General would become entitled to that salary in terms of this clause. The provision relating to reduction from salary of pension, other than a disability or wound pension, drawn, if any, by the Comptroller and Auditor-General is analogous to paragraph 9 of Part D of the Second Schedule to the Constitution, applicable in the case of Judges of the Supreme Court.

Clause 4.—This clause provides that the Comptroller and Auditor-General shall hold office for a term of 6 years from the date on which he assumes office or till he attains the age of 65 years whichever is earlier. This is a slight change from the existing provision under section 2 of the Comptroller and Auditor-General (Conditions of Service) Act, 1953 (21 of 1953) which provide for a term of 6 years but without any age restriction.

Clause 5.—This clause will enable a Comptroller and Auditor-General who was in the service of Government before assumption of office, to take leave in accordance with the rules of the Service to which he belonged except that consequent on clause 6, it provides for the carry forward of the amount of leave at credit immediately before the date of assumption of office when he will be deemed to have retired from his previous service.

Clause 6.—This clause introduces new provisions relating to the pension of the Comptroller and Auditor-General. First it provides that a person who immediately before assuming office as Comptroller and Auditor-General was in the service of Government should be deemed to have retired from his previous service on the date on which he enters upon office as Comptroller and Auditor-General. On demitting office as Comptroller and Auditor-General he will be paid a pension of Rs. 15,000 per annum which will be inclusive of any prior pension admissible to or earned by him including pension equivalent of death-*cum*-retirement gratuity. Any other person appointed as Comptroller and Auditor-General will also be eligible for a pension of Rs. 15,000 per annum. This pension will be admissible if a person demits the office of the Comptroller and Auditor-General on completing his tenure or attaining the age of 65 or due to ill-health. In case of resignation he will be entitled to a pension of Rs. 2,000 per annum for each completed year of service as Comptroller and Auditor-General, but the total annual pension payable to a person inclusive of any prior pension and pension equivalent of death-*cum*-retirement gratuity admissible to him for service under Government shall not exceed Rs. 15,000. Moreover, if the Comptroller and

Auditor-General is or becomes eligible at any time under the rules governing the service to which he belonged to a pension higher than Rs. 15,000 he shall be eligible to draw the higher pension. The existing provision is that the Comptroller and Auditor-General on demitting office will be eligible to a pension under the rules of the service to which he belonged, service as Comptroller and Auditor-General counting as approved service in the Service to which he belonged and in addition to an additional pension of Rs. 600 per annum for each completed year of service as Comptroller and Auditor-General subject to a maximum of £1,000 in the case of officers belonging to the Indian Civil Service, Rs. 12,000 in the case of officers belonging to other Services. The ceiling does not include pension equivalent of death-*cum*-retirement gratuity admissible to the officer. The pension provided under this clause will be applicable to the present incumbent of the office of the Comptroller and Auditor-General at his option if it is of advantage to him as well as for future incumbents. The main changes from the existing provision are—

(*a*) fixing the maximum pension at Rs. 15,000 per annum inclusive of any prior pension and pension equivalent of death-*cum*-retirement gratuity irrespective of whether the person appointed as Comptroller and Auditor-General belonged to the Indian Civil Service or any other service.

(*b*) A Service officer appointed as Comptroller and Auditor-General will be deemed to have retired from his previous service.

(*c*) The maximum pension of Rs. 15,000 is admissible even to a person who has had no previous service under Government before assuming the office of Comptroller and Auditor-General.

Clause 7.—This clause seeks to extend the benefit of the Civil Pensions (Commutation) Rules to the Comptroller and Auditor-General.

Clause 8.—According to this clause, the Comptroller and Auditor-General will be entitled to subscribe to the General Provident Fund (Central Services).

Clause 9.—This clause provides that the other conditions of service of the Comptroller and Auditor-General, *i.e.*, those not specifically provided for in the Bill, shall be determined by the rules for the time being applicable to a member of the Indian Administrative Service holding the rank of Secretary to the Government of India and follows the existing provisions.

Clause 10.—The existing Order provides that the Comptroller and Auditor-General shall be responsible for keeping the accounts of the Union and of each State—except the accounts relating to Defence and Railways. The President or the Governor, as the case may be, has, however, the authority to relieve the Comptroller and Auditor-General, after consultation with him, from the responsibility for keeping the accounts of any particular service or department. The President may also relieve the Comptroller and Auditor-General from the responsibility for keeping the accounts of any particular class or character. In exercise of these powers the Comptroller and Auditor-General has been relieved of the responsibility for the maintenance of accounts of certain selected Departments (*e.g.*, Food Department, Rehabilitation Department, Supply Department, Lok Sabha, Rajya Sabha, etc.). The Administrative Reforms Commission after considering the pros and cons of the scheme has recommend-

ed that as a general policy the responsibility for maintaining the accounts should continue to vest in the Comptroller and Auditor-General except where separate accounts offices have already been set up for the purpose. Clause 10 provides for the maintenance of the *status quo* with this difference that the responsibility vested in the Comptroller and Auditor-General will be in respect of compiling accounts and keeping them where necessary. This clause also gives the President or the Governor, as the case may be, the power to revoke any existing arrangement after consultation with the Comptroller and Auditor-General.

Clause 11.—This clause requires as at present the Comptroller and Auditor-General to prepare the annual accounts separately for the Union and each of the States and Union territories having Legislative Assemblies showing the receipts and disbursements and to submit them to the President, the Governor or the Administrator, as the case may be. In addition, where the accounts are compiled by him he has also to prepare an Appropriation Account showing the expenditure brought to account against the moneys authorised under the Appropriation Act and submit the same to the President, the Governor or the Administrator, as the case may be.

Clause 12.—This clause casts a duty on the Comptroller and Auditor-General to furnish such information to the Union Government or the State Governments or Governments of Union territories having Legislative Assemblies as required and as could be gathered from the accounts for the compilation or keeping of which he is responsible, and is based on the existing arrangement.

Clause 13.—This clause provides that the Comptroller and Auditor-General will audit all expenditure from the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly, all transactions relating to the Contingency Funds and Public Accounts and all trading, manufacturing, profit and loss accounts and balance-sheets and other subsidiary accounts and follows the existing provisions.

Clause 14.—This is a new provision which provides for audit by the Comptroller and Auditor-General of the accounts of bodies or authorities substantially financed by grants or loans from the Consolidated Fund of India or a State or of a Union territory having a Legislative Assembly. For this purpose, a grant or loan will be treated as substantial if it is not less than Rs. 5 lakhs and constitutes not less than 75 per cent. of the total expenditure of the body or authority in a financial year.

Clause 15.—This clause requires the Comptroller and Auditor-General to scrutinise the procedures by which any authority sanctioning a grant or a loan from the Consolidated Fund of India or of any State or of a Union territory having a Legislative Assembly to any authority or body other than a foreign State or International Organisation satisfies itself as to the fulfilment of the conditions subject to which the grant or loan was given. For this purpose the Comptroller and Auditor-General will have right of access after giving reasonable previous notice, to the books and accounts of the authority or body but in so far as a Corporation established by law is concerned, if the law establishing the Corporation provides for the audit of its accounts by an agency other than the Comptroller and Auditor-General, he will not have right of access to the books

and accounts unless he is so authorised by the President, the Governor of a State or the Administrator of a Union territory, after consultation with the Comptroller and Auditor-General and after giving an opportunity to the concerned Corporation to make any representation with regard to such authorisation. Provision has also been made to empower the President, the Governor or the Administrator, as the case may be, to relieve the Comptroller and Auditor-General from the responsibility of the scrutiny provided for in this clause in public interest and after consultation with the Comptroller and Auditor-General.

Clause 16.—Under the existing arrangements, audit of receipts can be taken up by the Comptroller and Auditor-General with the approval of or if required by the President or Governor. This clause empowers the Comptroller and Auditor-General to audit all receipts which are payable into the respective Consolidated Funds and to satisfy himself that the rules and procedures are designed to secure an effective check on assessment, collections, etc., and to report thereon as recommended by the Administrative Reforms Commission and as envisaged in article 151 of the Constitution.

Clause 17.—This clause vests the Comptroller and Auditor-General with authority to audit the accounts of stores and stocks and to report thereon. Under the existing arrangements he can do so with the approval of or if so required by the President or the Governor as the case may be.

Clause 18(*1*) (*a*) (*b*) and (c).—These sub-clause give to the Comptroller and Auditor-General the authority which he even now has in respect of inspection of any office of accounts and production of documents for his inspection and also to put questions and make observations which he may consider necessary and to call for such information as he may require for the preparation of his reports.

Clause 18(*2*).—This is a new provision which requires the accounts offices inspected or audited by the Comptroller and Auditor-General to afford all facilities for such inspection or audit and to comply with requests for information.

Clause 19.—This clause provides for the conduct of audit by the Comptroller and Auditor-General of Government companies in accordance with the provisions of the Companies Act, 1956 and of corporations established by law in accordance with the provisions of the respective statutes establishing the Corporation. Where, however, a Corporation has been established by law made by a State or a Union territory Legislature the Comptroller and Auditor-General will audit the accounts of the Corporation, if so requested by the Governor of the State or the Administrator of the Union territory, as the case may be, in public interest and after consultation with the Comptroller and Auditor-General and after giving a reasonable opportunity to the Corporation to make representations with regard to the proposal for such audit. State or Union territoy laws cannot provide for such audit as the Comptroller and Auditor-General's duties and powers are required to be regulated by an Act of Parliament under article 149 of the Constitution and hence this provision.

Clause 20.—This is an enabling provision. Under this clause the Comptroller and Auditor-General will at the request of the President or the Governor of a State or the Administrator of a Union territory, as the

case may be, undertake the audit of the accounts of any authority or body not otherwise entrusted to him by or under any law made by Parliament. Such audit will be entrusted to the Comptroller and Auditor-General only in public interest and after giving a reasonable opportunity to the concerned body or authority to make representations with regard to the proposal for such audit. This is a new provision which gives statutory recognition to what is known commonly as "consent" audit. This clause also provides that the Comptroller and Auditor-General may propose to the President, the Governor of a State or the Administrator of a Union territory that he may be authorised to undertake audit of any body or authority not entrusted to him.

Clause 21.—This clause provides for the delegation by the Comptroller and Auditor-General to any officer of his department of the powers exercisable by him except in the matter of submission of Audit Report and follows the existing arrangement.

Clause 22.—This clause provides the usual authority to the Central Government after consultation with the Comptroller and Auditor-General for framing rules in the matter of maintenance of Government accounts. The rules will be laid before both Houses of Parliament.

Clause 23.—This is a new provision enabling the Comptroller and Auditor-General to make regulations in regard to the extent and scope of audit.

Clause 24.—This clause gives statutory authority to the Comptroller and Auditor-General to dispense with the detailed audit of any accounts or class of transactions.

FINANCIAL MEMORANDUM

Under clause 3 of the Bill, the Comptroller and Auditor-General shall be paid salary which is equal to the salary of the Judge of Supreme Court subject to appropriate reduction in the case of persons in receipt of pension separately. At the existing level of salary of Judge of Supreme Court, the expenditure (charged) on this account would be Rs. 40,000 per annum.

Sub-clauses (2), (3) and (4) of clause 6 of the Bill provide that a person on demitting office as Comptroller and Auditor-General will be paid a pension of Rs. 15,000 per annum which will be inclusive of any pension including pension equivalent of death-*cum*-retirement gratuity admissible to him for prior service, if any, under Government.

Under sub-clause (5) of clause 6 the present incumbent of the office of the Comptroller and Auditor-General has got the option to draw pension under clause 6 of the Bill or under the provisions of the Comptroller and Auditor-General (Conditions of Service) Act, 1953.

Sub-clause (6) of clause 6 provides that a person who demits office of Comptroller and Auditor-General by resignation will be eligible to a pension at the rate of Rs. 2,000 per annum for each completed year of service as Comptroller and Auditor-General but the total annual pension payable to a person inclusive of any prior pension payable to him for service under Government will not exceed Rs. 15,000 per annum.

In all these cases mentioned above, the aggregate amount of pension inclusive of commuted portion of the pension and pension equivalent of death-*cum*-retirement gratuity admissible to a person for his prior service under Government, if any, will not exceed Rs. 15,000 except in the following case:

Where a person who has had prior service under Government becomes eligible at any time under the rules governing the service to which he belonged to a pension higher than the sum of Rs. 15,000 in which case he would be eligible to draw as pension the higher amount.

Under clause 9 of the Bill the travelling allowance of the Comptroller and Auditor-General while travelling on duty shall be determined by the rules for the time being applicable to a member of the Indian Administrative Service holding the rank of Secretary to the Government of India. The annual expenditure (charged) on this account will be of the order of Rs. 15,000.

The duties and powers of the Comptroller and Auditor-General in relation to the accounts of the Union, of the States and of the Union territories having Legislative Assemblies and of other authorities or bodies, including keeping and compiling of accounts and audit of receipts and expenditure, are provided for in clauses 10 to 20 of the Bill. Most of these duties and powers are being discharged or exercised, as the case may be, by the Comptroller and Auditor-General even now.

Clause 21 of the Bill provides that any power exercisable by the Comptroller and Auditor-General may be exercised by such officer of his Department (the Indian Audit and Accounts Department) as may be authorised by him. The expenditure on this Department including

the salary and allowances of the Comptroller and Auditor-General during 1971-72 (for which provision has been made in the Budget for 1971-72), is estimated to be of the order of Rs. 32·33 crores (which includes charged expenditure of Rs. 53·27 lakhs), of which Rs. 5·37 crores is recoverable from Railways, Posts and Telegraphs and other departments or bodies whose accounts are maintained or audited, or both, by the Comptroller and Auditor-General. In addition a non-recurring provision of Rs. 65 lakhs has also been made for buildings. With expanding activities of Government, both Central and State, the work of the Comptroller and Auditor-General will also increase, leading to increase in staff. It is difficult however at this stage to indicate precisely the likely expenditure on the additional staff that might be required but the annual increase in expenditure due to expansion, normal increments, etc., is expected to be of the order of 5 per cent.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill empowers the President to make such adaptations in the Civil Pensions (Commutation) Rules as may be necessary.

Sub-clause (1) of clause 22 of the Bill provides that the Central Government may, after consultation with the Comptroller and Auditor-General, by notification in the Official Gazette, make rules for carrying out the purposes of the Bill in so far as they relate to the maintenance of accounts. The matters which may be provided for in the rules have been specified in sub-clause (2). They, *inter alia,* relate to the manner in which initial and subsidiary accounts shall be kept by treasuries, offices and departments rendering accounts to the audit and accounts offices; the manner in which the accounts for the compiling and keeping of which the Comptroller and Auditor-General has been relieved of the responsibility, shall be compiled or kept and the manner in which the accounts of stores and stock shall be kept in any office or department. Under sub-clause (3) of clause 22, the rules will be subject to the scrutiny of Parliament.

Clause 23 of the Bill authorises the Comptroller and Auditor-General to make regulations for carrying into effect the provisions of the Bill in so far as they relate to scope and extent of audit, including laying down for the guidance of the Government Departments the general principles of Government accounting and the broad principles in regard to audit of receipts and expenditure. Since these regulations would be in the nature of departmental instructions by the Comptroller and Auditor-General or instructions for the guidance of Government Departments.

The matters in relation to which delegation of Legislative power has been made by the Bill are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of Legislative power is, therefore, of a normal character.

BILL No. 111 OF 1971

A Bill to make provision for the appointment and functions of certain authorities for the investigation of administrative action taken by or on behalf of the Government or certain public authorities in certain cases and for matters connected therewith.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Lokpal and Lokayuktas Act, 1971.

(2) It extends to the whole of India and applies also to public servants outside India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "action" means action taken by way of decision, recommendation or finding or in any other manner and includes failure to act;

and all other expressions connoting action shall be construed accordingly;

(*b*) "allegation", in relation to a public servant, means any affirmation that such public servant,—

(*i*) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person,

(*ii*) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives, or

(*iii*) is guilty of corruption, or lack of integrity in his capacity as such public servant;

(*c*) "competent authority", in relation to a public servant, means,—

(*i*) in the case of a Minister or Secretary	the Prime Minister,
(*ii*) in the case of any other public servant	such authority as may be prescribed;

(*d*) "grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of maladministration;

(*e*) "Lokpal" means a person appointed as the Lokpal under section 3;

(*f*) "Lokayukta" means a person appointed as a Lokayukta under section 3;

(*g*) "maladministration" means action taken or purporting to have been taken in the exercise of administrative functions in any case,—

(*i*) where such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory; or

(*ii*) where there has been negligence or undue delay in taking such action, or the administrative procedure or practice governing such action involves undue delay;

(*h*) "Minister" means a member (other than the Prime Minister) of the Council of Ministers, by whatever name called, for the Union and includes a Deputy Minister;

(*i*) "officer" means a person appointed to a public service or post in connection with the affairs of the Union;

(*j*) "prescribed" means prescribed by rules made under this Act;

(*k*) "public servant" denotes a person falling under any of the descriptions hereinafter following, namely:—

(i) every Minister referred to in clause (*h*),

(*ii*) every officer referred to in clause (*i*),

(*iii*) every member of the Council of Ministers in a Union territory, appointed under section 45 of the Government of Union Territories Act, 1963, and in the case of the Union territory of Delhi, every member of the Executive Council constituted under the Delhi Administration Act, 1966, 20 of 1963. 19 of 1966.

(*iv*) every person in the service or pay of,—

(*a*) any local authority in any Union territory, which is notified by the Central Government in this behalf in the Official Gazette,

(*b*) any corporation (not being a local authority) established by or under a Central Act and owned or controlled by the Central Government,

(*c*) any Government company within the meaning of section 617 of the Companies Act, 1956, in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any company which is a subsidiary of a company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, .. 1 of 1956.

(*d*) any society registered under the Societies Registration Act, 1860, which is subject to the control of the Central Government and which is notified by that Government in this behalf in the Official Gazette; 21 of 1960.

(*l*) "Secretary" means,—

(*i*) a Secretary, a Special Secretary, or an Additional Secretary, to the Government of India in any Ministry or Department,

(*ii*) a Secretary, a Special Secretary, or an Additional Secretary, in the Cabinet Secretariat, Prime Minister's Secretariat or, as the case may be, the office of the Planning Commission,

and includes a Joint Secretary in independent charge of such Ministry, Department, Secretariat or, as the case may be, the office of the Planning Commission.

Appointment of Lokpal and Lokayuktas.

3. (*1*) For the purpose of conducting investigations in accordance with the provisions of this Act, the President shall, by warrant under his hand and seal, appoint a person to be known as the Lokpal and one or more persons to be known as the Lokayukta or Lokayuktas:

Provided that,—

(*a*) the Lokpal shall be appointed after consultation with the Chief Justice of India and the Leader of the Opposition in the House of the People, or if there be no such Leader, a person elected in this behalf by the Members of the Opposition in that House in such manner as the Speaker may direct;

(*b*) the Lokayukta or Lokayuktas shall be appointed after consultation with the Lokpal.

(2) Every person appointed as the Lokpal or a Lokayukta shall, before entering upon his office, make and subscribe, before the President, or some person appointed in that behalf by the President, an oath or affirmation in the form set out for the purpose in the First Schedule.

(3) The Lokayuktas shall be subject to the administrative control of the Lokpal and, in particular, for the purpose of convenient disposal of investigations under this Act, the Lokpal may issue such general or special directions as he may consider necessary to the Lokayuktas:

Provided that nothing in this sub-section shall be construed to authorise the Lokpal to question any finding, conclusion or recommendation of a Lokayukta.

Lokpal or Lokayukta to hold no other office.

4. The Lokpal or a Lokayukta shall not be a member of Parliament or a member of the Legislature of any State and shall not hold any office of trust or profit (other than his office as the Lokpal or, as the case may be, a Lokayukta), or be connected with any political party or carry on any business or practise any profession and accordingly before he enters upon his office, a person appointed as the Lokpal or, as the case may be, as a Lokayukta, shall,—

(a) if he is a member of Parliament or of the Legislature of any State, resign such membership; or

(b) if he holds any office of trust or profit, resign from such office; or

(c) if he is connected with any political party, sever his connection with it; or

(d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

(e) if he is practising any profession, cease to practise such profession.

Term of office and other conditions of service of Lokpal and Lokayukta.

5. (1) Every person appointed as the Lokpal or a Lokayukta shall hold office for a term of five years from the date on which he enters upon his office:

Provided that,—

(a) the Lokpal or a Lokayukta may by writing under his hand addressed to the President, resign his office;

(b) the Lokpal or a Lokayukta may be removed from office in the manner specified in section 6.

(2) If the office of the Lokpal or a Lokayukta becomes vacant or if the Lokpal or a Lokayukta is, by reason of absence or for any other reason whatsoever, unable to perform the duties of his office, those duties shall, until some other person appointed under section 3 enters upon such office or, as the case may be, until the Lokpal or such Lokayukta resumes his duties, be performed,—

(a) where the office of the Lokpal becomes vacant or where he is unable to perform the duties of his office, by the Lokayukta or

if there are two or more Lokayuktas, by such one of the Lokayuktas as the President may by order direct;

(*b*) where the office of a Lokayukta becomes vacant or where he is unable to perform the duties of his office, by the Lokpal himself, or if the Lokpal so directs, by the other Lokayukta or, as the case may be, such one of the other Lokayuktas as may be specified in the direction.

(*3*) On ceasing to hold office, the Lokpal or a Lokayukta shall be ineligible for further employment (whether as the Lokpal or a Lokayukta or in any other capacity) under the Government of India or under the Government of a State or for any employment under, or office in, any such local authority, corporation, Government company or society as is referred to in sub-clause (*iv*) of clause (*k*) of section 2.

(*4*) There shall be paid to the Lokpal and the Lokayuktas such salaries as are specified in the Second Schedule.

(*5*) The Lokpal and every Lokayukta shall be entitled without payment of rent to the use of an official residence.

(*6*) The allowances and pension payable to, and other conditions of service of, the Lokpal or a Lokayukta shall be such as may be prescribed:

Provided that,—

(*a*) in prescribing the allowances and pension payable to, and other conditions of service of, the Lokpal, regard shall be had to the allowances and pension payable to, and other conditions of service of, the Chief Justice of India;

(*b*) in prescribing the allowances and pension payable to, and other conditions of service of, the Lokayuktas, regard shall be had to the allowances and pension payable to, and other conditions of service of, a Judge of the Supreme Court of India:

Provided further that the allowances and pension payable to, and other conditions of service of, the Lokpal or a Lokayukta shall not be varied to his disadvantage after his appointment.

Removal of Lokpal or Lokayukta.

6. (*1*) Subject to the provisions of article 311 of the Constitution, the Lokpal or a Lokayukta may be removed from his office by the President on the ground of misbehaviour or incapacity and on no other ground:

Provided that the inquiry required to be held under clause (2) of the said article before such removal shall be held by a person appointed by the President, being a person who is or has been a Judge of the Supreme Court of India.

(*2*) The person appointed under the proviso to sub-section (*1*) shall submit the report of his inquiry to the President who shall, as soon as may be, cause it to be laid before each House of Parliament.

(*3*) Notwithstanding anything contained in sub-section (*1*), the President shall not remove the Lokpal or a Lokayukta unless an address by each House of Parliament supported by a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal.

Matters which may be investigated by Lokpal or Lokayukta.

7. (*1*) Subject to the provisions of this Act the Lokpal may investigate any action which is taken by, or with the general or specific approval of,—

(*i*) a Minister or a Secretary; or

(*ii*) any other public servant being a public servant of a class or sub-class of public servants notified by the Central Government in consultation with the Lokpal in this behalf,

in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokpal, the subject of a grievance or an allegation.

(*2*) Subject to the provisions of this Act, a Lokayukta may investigate any action which is taken by, or with the general or specific approval of, any public servant not being a Minister, Secretary or other public servant referred to in sub-section (*1*) in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokayukta, the subject of a grievance or an allegation.

(*3*) Notwithstanding anything contained in sub-section (*2*), the Lokpal may, for reasons to be recorded in writing, investigate any action which may be investigated by a Lokayukta under that sub-section whether or not a complaint has been made to the Lokpal in respect of such action.

(*4*) Where two or more Lokayuktas are appointed under this Act, the Lokpal may, by general or special order, assign to each of them matters which may be investigated by them under this Act:

Provided that no investigation made by a Lokayukta under this Act and no action taken or thing done by him in respect of such investigation shall be open to question on the ground only that such investigation relates to a matter which is not assigned to him by such order.

Matters not subject to investigation.

8. (*1*) Except as hereinafter provided, the Lokpal or a Lokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action,—

(*a*) if such action relates to any matter specified in the Third Schedule; or

(*b*) if the complainant has or had any remedy by way of proceedings before any tribunal or court of law:

Provided that the Lokpal or a Lokayukta may conduct an investigation notwithstanding that the complainant had or has such a remedy if the Lokpal or, as the case may be, the Lokayukta is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy.

(*2*) The Lokpal or a Lokayukta shall not investigate any action—

(*a*) in respect of which a formal and public inquiry has been ordered under the Public Servants Inquiries Act, 1850, with the prior concurrence of the Lokpal; or

37 of 1850.

(*b*) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952, with the prior concurrence of the Lokpal. 60 of 1952.

(3) The Lokpal or a Lokayukta shall not investigate any complaint involving a grievance against a public servant referred to in sub-clause (*iv*) of clause (*k*) of section 2.

(4) The Lokpal or a Lokayukta shall not investigate any complaint which is excluded from his jurisdiction by virtue of a notification issued under section 18.

(5) The Lokpal or a Lokayukta shall not investigate,—

(*a*) any complaint involving a grievance, if the complaint is made after the expiry of twelve months from the date on which the action complained against becomes known to the complainant;

(*b*) any complaint involving an allegation, if the complaint is made after the expiry of five years from the date on which the action complained against is alleged to have taken place:

Provided that the Lokpal or a Lokayukta may entertain a complaint referred to in clause (*a*), if the complainant satisfies him that he had sufficient cause for not making the complaint within the period specified in that clause.

(6) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokpal or a Lokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised.

Provisions relating to complaints.

9. (1) Subject to the provisions of this Act, a complaint may be made under this Act to the Lokpal or a Lokayukta,—

(*a*) in the case of a grievance, by the person aggrieved;

(*b*) in the case of an allegation, by any person other than a public servant:

Provided that, where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate or, as the case may be, by any person who is authorised by him in this behalf.

(2) Every complaint shall be made in such form and shall be accompanied by such affidavits as may be prescribed.

(3) Notwithstanding anything contained in any other enactment, any letter written to the Lokpal or a Lokayukta by a person in police custody, or in a gaol or in any asylum or other place for insane persons, shall be forwarded to the addressee unopened and without delay by the police officer or other person in charge of such gaol, asylum or other place and the Lokpal or Lokayukta, as the case may be, may, if satisfied that it is necessary so to do, treat such letter as a complaint made in accordance with the provisions of sub-section (2).

Procedure in respect of investigations.

10. (*1*) Where the Lokpal or a Lokayukta proposes (after making such preliminary inquiry, as he deems fit) to conduct any investigation under this Act, he—

(*a*) shall forward a copy of the complaint or, in the case of any investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefor, to the public servant concerned and the competent authority concerned;

(*b*) shall afford to the public servant concerned an opportunity to offer his comments on such complaint or statement; and

(*c*) may make such orders as to the safe custody of documents relevant to the investigation, as he deems fit.

(*2*) Every such investigation shall be conducted in private and in particular, the identity of the complainant and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation:

Provided that the Lokpal or a Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he, for reasons to be recorded in writing, thinks fit to do so.

(*3*) Save as aforesaid the procedure for conducting any such investigation shall be such as the Lokpal or, as the case may be, the Lokayukta considers appropriate in the circumstances of the case.

(*4*) The Lokpal or a Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation, if in his opinion—

(*a*) the complaint is frivolous or vexatious or is not made in good faith; or

(*b*) there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or

(*c*) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

(*5*) In any case where the Lokpal or a Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint, he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

(*6*) The conduct of an investigation under this Act in respect of any action shall not affect such action, or any power or duty of any public servant to take further action with respect to any matter subject to the investigaion.

Evidence.

11. (*1*) Subject to the provisions of this section, for the purpose of any investigation (including the preliminary inquiry, if any, before such investigation) under this Act, the Lokpal or a Lokayukta may require any public servant or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purpose of any such investigation (including the preliminary inquiry), the Lokpal or a Lokayukta shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) such other matters as may be prescribed.

(3) Any proceeding before the Lokpal or a Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code. 45 of 1860.

(4) Subject to the provisions of sub-section (5), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of any investigation under this Act and the Government or any public servant shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any rule of law in legal proceedings.

(5) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document—

(a) as might prejudice the security or defence or international relations of India (including India's relations with the Government of any other country or with any international organisation), or the investigation or detection of crime; or

(b) as might involve the disclosure of proceedings of the Cabinet of the Union Government or any Committee of that Cabinet or of the Cabinet of the Government of any Union territory or of the Executive Council constituted under the Delhi Administration Act, 1966, or of any Committee of such Cabinet or Executive Council, and for the purpose of this sub-section a certificate issued by a Secretary certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b), shall be binding and conclusive. 19 of 1966.

(6) Subject to the provisions of sub-section (4), no person shall be compelled for the purposes of investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a Court.

Reports of Lokpal and Lokayuktas.

12. (1) If, after investigation of any action in respect of which a complaint involving a grievance has been or can be or could have been made, the Lokpal or a Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or any other person, the Lokpal or Lokayukta shall, by a report in writing, recommend to the public servant and the competent authority concerned that such injustice or undue hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.

(2) The competent authority to whom a report is sent under sub-section (1) shall, within one month of the expiry of the term specified in the report, intimate or cause to be intimated to the Lokpal or, as the case may be, the Lokayukta, the action taken for compliance with the report.

(3) If, after investigation of any action in respect of which a complaint involving an allegation has been or can be or could have been made, the Lokpal or a Lokavukta is satisfied that such allegation can be substantiated either wholly or partly, he shall by a report in writing communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority.

(4) The competent authority shall examine the report forwarded to it under sub-section (3) and intimate within three months of the date of receipt of the report, the Lokpal or, as the case may be, the Lokayukta, the action taken or proposed to be taken on the basis of the report.

(5) If the Lokpal or the Lokavukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-sections (1) and (3), he shall close the case under information to the complainant, the public servant and the competent authority concerned, but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the President and also inform the complainant concerned.

(6) The Lokpal and the Lokayuktas shall present annually a consolidated report on the performance of their functions under this Act to the President.

(7) On receipt of a special report under sub-section (5), or the annual report under sub-section (6), the President shall cause a copy thereof together with an explanatory memorandum to be laid before each House of Parliament.

(8) Subject to the provisions of sub-section (2) of section 10, the Lokpal may at his discretion make available, from time to time, the substance of cases closed or otherwise disposed of by him or by a Lokayukta, which may appear to him to be of general public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

Staff of Lokpal and Lokayuktas.

13. (1) The Lokpal may appoint, or authorise a Lokavukta or any officer subordinate to the Lokpal or a Lokayukta to appoint, officers and other employees to assist the Lokpal and the Lokayuktas in the discharge of their functions under this Act.

(2) The categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Lokpal and Lokayuktas shall be such as may be prescribed after consultation with the Lokpal.

(3) Without prejudice to the provisions of sub-section (1), the Lokpal or a Lokayukta may, for the purpose of conducting investigations under this Act, utilize the services of,—

(i) any officer or investigation agency of the Central Government with the concurrence of that Government; or

(ii) any other person or agency.

Secrecy of information.

14. (1) Any information, obtained by the Lokpal or the Lokayuktas or members of their staff in the course of, or for the purposes of any investigation under this Act, and any evidence recorded or collected in connection with such information, shall, subject to the provisions of the proviso to sub-section (2) of section 10, be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall be entitled to compel the Lokpal or a Lokayukta or any public servant to give evidence relating to such information or produce the evidence so recorded or collected. 1 of 1872.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars,—

(a) for purposes of the investigation or in any report to be made thereon or for any action or proceedings to be taken on such report; or

(b) for purposes of any proceedings for an offence under the Indian Official Secrets Act, 1923, or an offence of giving or fabricating false evidence under the Indian Penal Code or for purposes of any proceedings under section 15; or 19 of 1923. 45 of 1860.

(c) for such other purposes as may be prescribed.

(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokpal or a Lokayukta, as the case may be, with respect to any document or information specified in the notice or any class of documents so specified that in the opinion of the Central Government the disclosure of the documents or information or of documents or information of that class would be contrary to public interest and where such a notice is given, nothing in this Act shall be construed as authorising or requiring the Lokpal, the Lokayukta or any member of their staff to communicate to any person any document or information specified in the notice or any document or information of a class so specified.

Intentional insult or interruption to, or bringing into disrepute, Lokpal or Lokayukta.

15. (1) Whoever intentionally offers any insult, or causes any interruption to the Lokpal or a Lokayukta, while the Lokpal or the Lokayukta is conducting any investigation under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever, by words spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Lokpal or a Lokayukta into disrepute, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(3) The provisions of section 198B of the Code of Criminal Procedure, 1898, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (1) of the said section 198B, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction,— 5 of 1898.

(a) in the case of an offence against the Lokpal, of the Lokpal;

(b) in the case of an offence against a Lokayukta, of the Lokayukta concerned.

Protection.

16. (1) No suit, prosecution or other legal proceeding shall lie against the Lokpal or the Lokayuktas or against any officer, employee, agency or person referred to in section 13 in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceedings of the Lokpal or the Lokayuktas shall be held bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokpal or the Lokayuktas shall be liable to be challenged, reviewed, quashed or called in question in any court.

Conferment of additional functions on Lokpal and Lokayuktas, etc.

17. (1) The President may, by notification published in the Official Gazette and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta, as the case may be, such additional functions in relation to the redress of grievances and eradication of corruption as may be specified in the notification.

(2) The President may, by order in writing and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta such powers of a supervisory nature over agencies, authorities or officers set up, constituted or appointed by the Central Government for the redress of grievances and eradication of corruption.

(3) The President may, by order in writing and subject to such conditions and limitations as may be specified in the order, require the Lokpal to investigate any action (being action in respect of which a complaint may be made under this Act to the Lokpal or a Lokayukta), and notwithstanding anything contained in this Act the Lokpal shall comply with such order:

Provided that the Lokpal may entrust investigation of any such action (being action in respect of which a complaint may be made under this Act to a Lokayukta) to a Lokayukta.

(4) When any additional functions are conferred on the Lokpal or a Lokayukta under sub-section (1), or when the Lokpal or a Lokayukta is to investigate any action under sub-section (3), the Lokpal or Lokayukta shall exercise the same powers and discharge the same functions as he would in the case of any investigation made on a complaint involving a grievance or an allegation, as the case may be, and the provisions of this Act shall apply accordingly.

Power to exclude complaints against certain classes of public servants,

18. (1) The Central Government may on the recommendation of the Lokpal and on being satisfied that it is necessary or expedient in the public interest so to do, exclude, by notification in the Official Gazette, complaints, involving grievances or allegations or both against persons belonging to any class of public servants specified in the notification, from the jurisdiction of the Lokpal or, as the case may be, Lokayukta:

Provided that no such notification shall be issued in respect of public servants holding posts carrying a minimum monthly salary (exclusive of allowances) of one thousand rupees or more.

(2) Every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done by virtue of that notification.

Power to delegate.

19. The Lokpal or a Lokayukta may, by a general or special order in writing, direct that any powers conferred or duties imposed on him by or under this Act (except the power to make reports to the President under section 12) may also be exercised or discharged by such of the officers, employees or agencies referred to in section 13, as may be specified in the order.

Power to make rules.

20. (1) The President may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for—

(a) the authorities for the purpose required to be prescribed under sub-clause (ii) of clause (c) of section 2;

(b) the allowances and pension payable to and other conditions of service of, the Lokpal and Lokayuktas;

(c) the form in which, complaints may be made and the fees, if any, which may be charged in respect thereof;

(d) the powers of a civil court which may be exercised by the Lokpal or a Lokayukta;

(e) any other matter which is to be or may be prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is in the opinion of the President necessary for the proper implementation of this Act.

(3) Every rule made under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

21. For the removal of doubts it is hereby declared that nothing in this Act shall be construed to authorise the Lokpal or a Lokayukta to investigate any action which is taken by or with the approval of— Removal of doubts.

45 of 1860. (*a*) any Judge as defined in section 19 of the Indian Penal Code;

(*b*) any officer or servant of any court in India;

(*c*) the Comptroller and Auditor-General of India;

(*d*) the Chairman or a member of the Union Public Service Commission;

(*e*) the Chief Election Commissioner, the Election Commissioners and the Regional Commissioners referred to in article 324 of the Constitution;

(*f*) any member of the secretarial staff of either House of Parliament, or the Legislative Assembly of a Union territory or the Metropolitan Council of Delhi.

22. The provisions of this Act shall be in addition to the provisions of any other enactment or any rule of law under which any remedy by way of appeal, revision, review or in any other manner is available to a person making a complaint under this Act in respect of any action, and nothing in this Act shall limit or affect the right of such person to avail of such remedy. Saving.

THE FIRST SCHEDULE

[*See* section 3(2)]

I,....., having been appointed *Lokpal* / a Lokayukta do

swear in the name of God / solemnly affirm that I will bear true faith and allegiance

to the Constitution of India as by law established and I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill.

THE SECOND SCHEDULE

[*See* section 5(4)]

There shall be paid to the Lokpal and the Lokayuktas in respect of time spent on actual service, salary at the following rates per mensem, that is to say—

Lokpal	**5,000 rupees**
Lokayukta	**4,000 rupees:**

Provided that if the Lokpal or a Lokayukta at the time of his appointment is in receipt of a pension (other than a disability or wound pension)

in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service as the Lokpal or, as the case may be, a Lokayukta shall be reduced—

(*a*) by the amount of that pension; and

(*b*) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension; and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

THE THIRD SCHEDULE

[*See* section 8 (*1*) (*a*)]

(*a*) Action taken in a matter certified by a Secretary as affecting the relations or dealings between the Government of India and any foreign Government or any international organisation of States or Governments.

(*b*) Action taken under the Extradition Act, 1962, or the Foreigners' Act, 1946. 34 of 1962. 31 of 1946.

(c) Action taken for the purpose of investigating crime or protecting the security of the State including action taken with respect to passports and travel documents.

(*d*) Action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not.

(*e*) Action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers, except where the complainant alleges harassment or gross delay in meeting contractual obligations.

(*f*) Action taken in respect of appointments, removals, pay, discipline, superannuation or other matters relating to conditions of service of public servants but not including action relating to claims for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service.

(*g*) Grant of honours and awards.

STATEMENT OF OBJECTS AND REASONS

The Administrative Reforms Commission was required to consider, among other matters, problems of redress of citizens' grievances, keeping in mind the need for ensuring the highest standards of efficiency and integrity in the public services, and also for making public administration responsive to the people. More specifically, the Commission was expected to examine:

(*i*) the adequacy of the existing arrangements for the redress of grievances; and

(*ii*) the need for introduction of any new machinery or special institution for redress of grievances.

Giving priority to this part of its terms of reference, the Commission made an interim report in which it took note of the oft-expressed public outcry against the prevalence of corruption, the existence of wide-spread inefficiency and the unresponsiveness of administration to popular needs. It felt that the answer to this lay in the provision of a machinery which would examine public complaints and sift the genuine from the false or the untenable so that the administration's failures and achievements could be publicly viewed in their correct perspective. Such an institution was regarded necessary even from the point of view of affording protection to the services. The Commission, therefore, recommended that there should be a statutory machinery to enquire into complaints alleging corruption or injustice arising out of maladministration.

2. The Bill seeks to give effect to the recommendations of the Administrative Reforms Commission, in so far as they relate to matters within the purview of the Union Government. Except for modifications of a formal nature, the Bill is identical with the Lokpal and Lokayuktas Bill, 1969, which was passed by the Fourth Lok Sabha on the 28th August, 1969, and which lapsed on its dissolution. In its scope, the Bill differs from the draft Bill proposed by the Administrative Reforms Commission in two major respects. It does not extend to public servants in the States. Secondly, it does not confine itself to Ministers and Secretaries alone. In other words, the Bill seeks to provide a statutory machinery to inquire into complaints based on actions of all Union public servants, including Ministers.

RAM NIWAS MIRDHA.

NEW DELHI;
The 2nd August, 1971.

Notes on clauses

[*Index to abbreviations*:

ARC—Administrative Reforms Commission.

ARC Bill—Bill appended to Interim Report of ARC.

U.K. Act—(United Kingdom) Parliamentary Commissioner Act, 1967.

New Zealand Act—(New Zealand) Parliamentary Commissioner (Ombudsman) Act, 1962.]

Clause 1.—Sub-clause (2) of this clause makes it clear that public servants outside India would also be amenable to the jurisdiction of Lokpal and Lokayuktas.

Clause 2:—

Sub-clause (*b*).—To distinguish between vigilance cases and grievance cases, a specific definition of allegation has been given. The proposed definition seeks to cover circumstances of political corruption also.

Sub-clause (*c*).—The definition of "competent authority" is relevant for the purposes of clauses 10 and 12.

Sub-clauses (*d*) and (*g*).—The definition of "grievance" has to be read with that of "maladministration" in clause 2(*g*). These definitions imply that a grievance cannot be referred to the Lokpal or a Lokayukta unless the complainant *himself* is affected. "Maladministration" has been defined to cover not only a decision but also administrative procedures or practices so that the administrative machinery itself is improved. Section 19(*1*) of the New Zealand Act may be seen in this connection.

Clause 3:—

Sub-clause (*1*).—This provides for appointment of Lokpal and Lokayuktas. The method of appointment of a Lokpal is in substance the same as suggested by the ARC in clauses 3(*1*) and 3(*2*) of their Bill.

The Lokayukta is to be appointed after consultation with the Lokpal.

Sub-clause (*3*).—It is proposed to have a single administrative office for the Lokpal and the Lokayuktas. A single authority in administrative charge, like the Chief Justice in the Supreme Court or a High Court, will be conducive to smooth functioning of the machinery. It has been made clear in the proviso that the Lokpal cannot operate as a reviewing or appellate authority over the Lokayuktas.

Clause 5:—

Sub-clauses (*1*) and (*2*).—These are self-explanatory.

Sub-clause (*3*).—This corresponds to clause 4(5) of the ARC Bill. This sub-clause seeks to debar the Lokpal or the Lokayuktas from taking up any further employment under the Central or a State Government or from any employment or office in the Central sector as would be within their purview while in office.

Sub-clauses (4), (5) and (6).—These sub-clauses correspond to clause 4(6) of the ARC Bill. Sub-clause (4) makes a specific provision about the salaries to be paid to the Lokpal and the Lokayuktas by appending to the Bill a schedule of such salaries (Second Schedule). Sub-clause (5) makes a provision for rent-free residential accommodation to the Lokpal and the Lokayuktas. Sub-clause (6) deals with allowances and pension payable to, and other conditions of service of, the Lokpal and Lokayuktas.

Clause 6.—This clause deals with removal of Lokpal and Lokayuktas. In keeping with the recommendations of the ARC, this clause seeks to ensure that the grounds and procedure for removal are similar to those applicable in the case of judges of Supreme Court.

Clause 7:—

Sub-clauses (1) and (2).—These correspond to clause 7(1) of the ARC Bill and provide for matters which may be investigated by the Lokpal and the Lokayuktas.

Sub-clauses (3) and (4).—These are self-explanatory and are *inter alia* intended to avoid duplication of investigations and ensure proper distribution of work amongst the Lokayuktas.

Clause 8:—

Sub-clause (1) (*a*).—This corresponds to clause 7(6) of the ARC Bill.

Sub-clause (1) (*b*).—This corresponds (except for the proviso) to clause 7(2) of the ARC Bill. The proviso is based on section 5(2)-proviso of the UK Act.

Sub-clause (2).—There is no such provision in the ARC Bill. The jurisdiction of the Lokpal or the Lokayukta in respect of any action which has been referred for inquiry under the Commissions of Inquiry Act, 1952, or under the Public Servants (Inquiries) Act, 1850, has been excluded only when such inquiry under the said Acts is made with the prior concurrence of the Lokpal. This additional provision is necessary so that matters which have already been enquired into under the aforesaid Acts with the prior concurrence of the Lokpal may not be subjected to another investigation by the Lokpal or the Lokayukta.

Sub-clause (3).—The "public servants" mentioned in clause 2(*k*) (*iv*) are strictly not Government servants but have been included in the definition to reflect the present jurisdiction of the Central Vigilance Commission which covers allegations only. Since the Central Vigilance Commission is not looking into complaints of grievances against them, there is no reason to include these categories of public servants in the grievances sector. There is no corresponding provision in the ARC Bill.

Sub-clause (4).—This is consequential to clause 18.

Sub-clause (5).—The time-limit for grievances is that recommended in clause 7(3) of ARC Bill, *viz.*, 12 months, but following section 6(3) of the UK Act it has been provided that the period shall be computed from the date of knowledge of action and not from the date of occurrence.

The period of limitation for allegations of corruption has been fixed as five years from the date of occurrence and not one year to allow for the time elapsing between the date of occurrence and the time of discovery.

In order to provide some relief in really hard cases a provision has been made for relaxation of the time-limit in the case of grievances alone.

Sub-clause (6).—This corresponds to sub-clause (6) (*h*) of clause 7 of the ARC Bill subject to an important difference. Whereas the ARC proposes this exclusion both for allegations as well as grievances, the proposed Bill uses the exclusion clause to reduce the scope of grievances alone. Most of the corruption cases are related to discretion and such a blanket exclusion provision may provide undue protection to corrupt public servants.

Clause 9:—

Sub-clauses (2) and (3).—There are no similar provisions in the ARC Bill. Whereas the ARC contemplates that allegations can be made by any person, the proposed Bill debars public servants from making allegations. This seems to be necessary in order to maintain the discipline of administrative organisation in a sound state.

The proviso to the sub-clause is modelled on section 6(2) of the UK Act and seems to be necessary.

Sub-clauses (2) and (3).—There are no similar provisions in the ARC Bill but the need for these is self-evident.

Clause 10:—

Sub-clause (1).—This corresponds to clause 8(1) of the ARC Bill. Unlike the ARC clause, this sub-clause seeks to provide that when the Lokpal or a Lokayukta decides (after making such preliminary inquiry, as he deems fit) to conduct an investigation against a public servant, the competent authority in respect of such public servant should also be informed of the matter. Further, the sub-clause empowers the Lokpal or a Lokayukta to make such orders as to the safe custody of the documents relevant to the investigation as he deems fit.

Sub-clause (2).—This corresponds to clause 8(2) of the ARC Bill. An additional provision is also made to the effect that the identity of the complainant and of the public servant concerned should not be disclosed to the public or the press at any time. This is to maintain morale in the public services. However, the Lokpal and the Lokayuktas are being empowered to conduct an investigation in public in cases of definite public importance.

Sub-clause (6).—There is no similar provision in the ARC Bill. This provision, which is modelled to some extent on section 7(4) of the UK Act, is necessary to ensure that administrative action connected with the matter under investigation by the Lokpal or the Lokayukta should not come to a standstill.

Clause 11:—

Sub-clause (1).—This corresponds to clause 9(1) of the ARC Bill.

Sub-clause (2).—This corresponds to clause 9(2) of the ARC Bill except that items (*e*) and (*f*) which are based on similar provisions in section 4 of the Commissions of Inquiry Act, 1952, are new.

Sub-clause (3).—There is no similar provision in the ARC Bill. The sub-clause is modelled on section 5(5) of the Commissions of Inquiry Act, 1952.

Sub-clause (4).— This sub-clause is applicable to all persons covered by the definition of "public servant". It provides that the Government or the public servants should not, save as provided in sub-clause (5), be entitled to claim any privilege with regard to the production of documents or giving evidence as is claimed in legal proceedings under any enactment or rule of law.

Sub-clause (5).—Subject to the following deviations, this corresponds to clause 9(4) of the ARC Bill:—

(*i*) Whereas the ARC Bill excludes the discovery of the whole document the sub-clause excludes only those parts of the document which attract security considerations. This will enable the Lokpal to obtain non-confidential extracts from confidential documents.

(*ii*) Whereas in the ARC Bill the certificate of secrecy has to be given by the Cabinet Secretary with the approval of the Prime Minister, this sub-clause authorises any Secretary to the Government to issue the certificate. This is in conformity with the administrative practice in our country.

(*iii*) Whereas the ARC Bill excludes the disclosure of the proceedings of the Union Cabinet or any Committee of the Cabinet, this sub-clause also excludes the proceedings of the Cabinet of the Union territory or of the Executive Council of Delhi Administration or of any committee of such Cabinet or Executive Council.

Clause 12:—

Sub-clause (1).—This corresponds to clause 11(3) of the ARC Bill with the only additional feature that the Lokpal/Lokayuktas will, in case of grievances, recommend also the manner in which an injustice should be remedied. Further, the recommendations would go not only to the public servants reported against but the competent authorities also. These additional provisions are necessary so that the public servants and the departments know about the manner on which the Lokpal/Lokayukta would like the injustice to be redressed.

Sub-clause (2).—There is no such provision in the ARC Bill. This provision is necessary for proper and timely implementation of the recommendations of the Lokpal and the Lokayuktas.

Sub-clauses (3) and (4).—These correspond to clause 11(6) of the ARC Bill.

Sub-clause (5).—This corresponds to clause 11(5) of the ARC Bill. Whereas under the ARC Bill special reports have to be laid before the Lok Sabha, under this sub-clause they will be sent to the President who will, under clause 12(7), lay them before each House of Parliament with an explanatory memorandum.

Sub-clause (6).—This corresponds to clause 11(7) of the ARC Bill. The Bill provides for one consolidated annual report for all the functionaries.

Sub-clause (7).—According to the ARC Bill, the Lokpal is to lay his report direct before Parliament. This sub-clause achieves the same result with the improvement that the report will be accompanied by an explanatory memorandum from the Government so that the reports are assessed in the proper light.

Sub-clause (8).—There is no similar provision in the ARC Bill. This is based on the practice in New Zealand where cases of academic interest are reported in the leading law and professional journals.

Clause 13.—This provides for the staff of Lokpal and Lokayuktas and the machinery required by them for conducting investigations.

Clause 14:—

Sub-clauses (1) and (2).—These sub-clauses correspond to clauses 12(2) and 12(3) of the ARC Bill and protect the secrecy of the information obtained by these functionaries and their staff. Sub-clause (1) protects information available not only to these functionaries and their employees but other public servants also who might have obtained or come by any information collected by these functionarise in the course of any investigation with which these public servants might have been connected.

Sub-clause (3).—This corresponds to clause 12(4) of the ARC Bill except that instead of a Minister, any officer or prescribed authority can in writing communicate the opinion of the Central Government to the effect that the information or document should not be disclosed. This is in accordance with the administrative practice in our country.

Clause 15.—This corresponds to clause 10 of the ARC Bill. The Lokpal and Lokayuktas do not qualify as courts as they are only fact-finding agencies. As such, it will not be permissible under article 19 of the Constitution to provide for contempt of these functionaries. A similar question was considered by the Law Commission with reference to Commissions of Inquiry under the Commissions of Inquiry Act, 1952, and the Law Commission had recommended that specific offences might be created making certain acts in the nature of contempt punishable.

Clause 16:—

Sub-clause (2).—There is no such provision in the ARC Bill. The provision is based on section 21 of the New Zealand Act.

Clause 17:—

Sub-clauses (1) and (2).—There are no similar provisions in the ARC Bill. These sub-clauses will enable the President by notification or order to transfer various quasi-administrative, consultative and supervisory functions currently discharged by the Central Vigilance Commission and the Commissioner for Public Grievances to the new functionaries.

Sub-clause (3).—There is no such provision in the ARC Bill. This will enable the Government to refer important cases to

the Lokpal for investigation and report. The proviso to this sub-clause will enable the Lokpal to entrust a case referred to him by the Government to a Lokayukta, if the circumstances of the case are such that a Lokayukta could have investigated it otherwise also.

Sub-clause (4).—This provides that the procedure and powers of investigation and report applicable in the case of investigations made on a complaint would also apply in relation to the discharge of additional functions conferred by the Government on the Lokpal or a Lokayukta under clause 17(*1*) and the investigations made under clause 17(*3*).

Clause 18.—This clause seeks to empower the Central Government to exclude by notification, on the recommendation of the Lokpal, complaints against public servants belonging to such class (not being public servants holding posts carrying a minimum monthly salary of one thousand rupees or more exclusive of allowances) as may be specified in the notification. The provision has been made with a view to enabling the Lokpal or the Lokayukta to concentrate on really important cases when the work becomes unmanageable. This may become necessary particularly in the case of public servants in the lower grades of pay. It has been provided that every such notification shall be laid before Parliament.

Clause 19.—There is no similar provision in the ARC Bill. The clause is modelled on section 3(2) of the U.K. Act and is necessary to enable the new functionaries to delegate routine functions of investigation etc., to the staff under them.

Clause 20.—There is no similar provision in the ARC Bill. This clause empowers the President to make rules under the Act.

Third Schedule, item (*f*).—This corresponds to item (*f*) of clause 7(6) of the ARC Bill with the difference that the term "other personnel matters" referred to in that item has been amplified. Further, complaints regarding pension, gratuity and other benefits which arise after retirement, removal or dismissal have not been excluded from the purview of these functionaries.

FINANCIAL MEMORANDUM

Clause 3(*1*) of the Bill provides for the appointment of a person to be known as the Lokpal and one or more persons to be known as the Lokayukta or Lokayuktas. Clause 5(*4*) and the Second Schedule deal with the salaries payable to the Lokpal and the Lokayuktas. Clause 5(5) provides that the Lokpal and every Lokayukta shall be entitled without payment of rent to the use of an official residence. Clause 5(*6*) of the Bill envisages that the allowances and pension payable to and other conditions of service of the Lokpal and the Lokayuktas shall be such as may be prescribed by rules. It, however, provides that in prescribing allowances and pension payable to, and other conditions of service of the Lokpal and the Lokayuktas, regard shall be had to the allowances and pension payable to and other conditions of service of the Chief Justice of India and a Judge of the Supreme Court, respectively. Clause 13 provides for the appointment of staff of the Lokpal and the Lokayuktas. The salaries and other conditions of service of the staff of the Lokpal and Lokayuktas are to be prescribed by rules after consultation with the Lokpal. It is, thus, not possible to give precise details of the expenditure involved. The new institutions are, however, estimated to entail a non-recurring expenditure of Rs. 1 lakh and a recurring expenditure of Rs. 12 lakhs a year.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 18 of the Bill empowers the Central Government to exclude from the jurisdiction of the Lokpal and Lokayuktas, by notification in the Official Gazette, complaints against certain classes of public servants. It is made clear that such exclusion can be made only on the recommendation of the Lokpal and that complaints against public servants holding posts carrying a minimum monthly salary (exclusive of allowances) of one thousand rupees or more cannot be so excluded. The notifications under the clause have to be laid before Parliament in the same manner as rules. The delegation of power to make such exclusion is necessary to ensure that the Lokpal and the Lokayuktas concentrate on really important cases when the work becomes unmanageable. Having regard to this object and the safeguards provided (prior recommendation of the Lokpal for the issue of the notification and laying of notification before Parliament), the delegation of legislative power is, in the circumstances of the case, of a normal character.

Clause 20 of the Bill empowers the Central Government to make rules for the purpose of carrying into effect the provisions of the proposed enactment. The various matters in relation to which such rules may be made have been enumerated in detail in the various items of sub-clause (2) of that clause and relate mainly to allowances and pension payable to, and other conditions of service of the Lokpal and the Lokayuktas, the procedure to be followed in making complaints, the powers of a civil court which may be exercised by the Lokpal or a Lokayukta, etc. These are matters of detail necessary for the effective administration of the provisions of the Bill and it is difficult to provide for all situations in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary

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